

## OCLC GROUP SERVICES TERMS AND CONDITIONS

Group Central Member may order OCLC Group Services on behalf of the Group by completing the relevant portions of the Order Form and agreeing to these OCLC Group Services Term and Conditions (these "Terms" or this "Agreement"). (The General Terms and Conditions below and the Attachment(s) corresponding to the Group Services ordered on behalf of the Group are the portions of these Terms that apply to your order.) These Terms recognize that Group Members may have existing agreements with OCLC for one or more of the components of OCLC Group Services being ordered. Such existing agreements apply to the extent indicated in these Terms. In the event of conflict between these Terms and any existing agreements between OCLC and a Group Member, the provisions of these Terms shall prevail. OCLC reserves the right to determine, within its sole discretion, whether a Group is eligible to purchase OCLC Group Services (or individual components thereof).

### **GENERAL TERMS AND CONDITIONS**

**1. Definitions.** The following definitions apply for purposes of these Terms:

- A. **"Group"** means the consortium of libraries and/or information agencies (i.e., historical societies, archives, museums or similar organizations) identified on the Order Form ordering OCLC Group Services by executing the Order Form and submitting it to OCLC.
- B. **"Group Member"** means any LiLI Unlimited member library for which the Group Central Member has complied with Section 3 below for purposes of binding such library or information agency to these Terms.
- C. **"Group Central Member"** means the lead institution in the Group as indicated on the Order Form. If receiving OCLC Group Services hereunder, the Group Central Member shall be included within the term "Group Member" for purposes of these Terms.
- D. **"OCLC Group Services"** means the products, services, functionality, processes and tools made available to the Group by OCLC as indicated on the Order Form. OCLC Group Services may include the Group Catalog, OCLC Resource Sharing, OCLC Metadata services and other services to the extent offered by OCLC.

**2. Fees.**

- A. Group Central Member shall pay for itself and collect from and pay on behalf of each Group Member to OCLC or its designee or, if applicable, shall use its reasonable efforts to ensure that each Group Member pays to OCLC or its designee directly, all applicable fees and reimbursable expenses, in U.S. dollars. Unless already advanced by Group Central Member to OCLC for the Group Members, all payments of fees and reimbursable expenses to OCLC received by Group Central Member from Group Members shall be remitted to OCLC by Group Central Member promptly following receipt, prior to which they shall be held in trust by Group Central Member for OCLC. Group Central Member shall not modify such fees or invoice or include any other charges except that the Group Central Member may collect fees and/or reimbursable expenses from Group Members in their local currency at a commercially reasonable, fixed exchange-rate, if acceptable to OCLC. OCLC shall be entitled to reimbursement of reasonable and necessary expenses incurred by OCLC during the performance of on-site services approved in advance by the Group or the relevant Group Member, including travel expenses, lodging, and meals, upon submission of itemized requests for reimbursement together with supporting documentation. Fees and reimbursable expenses shall be due and payable within thirty (30) days after receipt of OCLC's invoice(s) therefor. OCLC may suspend the availability of Group Services without liability in the event of a delinquent account.
- B. All fees under these Terms are exclusive of sales, use, excise and similar taxes and of customs, tariffs, impost fees and similar charges which may be applicable to the

transactions dealt with herein, all of which taxes, and charges, together with interest and penalties thereon, shall be the responsibility of Group Members and reimbursed to OCLC. Such taxes and charges for which claims or assessments could be made against OCLC may be added to invoices to Group Central Member or Group Members (as appropriate) unless evidence of a valid exemption has been furnished to OCLC by the relevant Group Member(s).

**3. Obligations of the Group Central Member**

- A. Group Central Member shall either (a) obtain and submit to OCLC the written agreement of each Group Member to these Terms, prior to OCLC distributing any authorizations and passwords thereto, on the then-current, OCLC-provided agreement form, or (b) if Group Central Member is indicated on the Order Form to be serving as the agent for Group Members, Group Central Member hereby agrees as agent for the Group Members that each Group Member shall comply with these Terms. Under subclause (b), Group Central Member warrants that it is authorized to bind Group Members to these Terms and shall indemnify OCLC from all loss, expense and damage arising from a breach of such warranty. Group Central Member shall provide each Group Member with a copy of these Terms prior to OCLC activation of authorizations therefor. Group Central Member shall use its reasonable efforts to ensure that Group Members comply with these Terms. Subject to OCLC acceptance, each order for Group Members shall constitute a direct contract between OCLC and the Group Member.
- B. Group Central Member shall not, and shall use reasonable efforts to ensure that Group Members do not omit, obscure or hide from any user hereunder any notice of a limitation of warranty, disclaimer, copyright, patent, trademark, trade secret, usage limitation, or any logo, splash screen or any other terms and/or conditions intended to be displayed to such user by OCLC.
- C. Group Central Member is not a buyer of OCLC Group Services for resale, and shall not charge Group Members for OCLC Group Services, nor for its services as agent or other services provided by Group Central Member in connection with OCLC Group Services.
- D. Group Central Member shall appoint a group administrator possessing full authority to make decisions on behalf of the Group regarding the implementation and ongoing maintenance of the Group Services. OCLC may rely on information provided by the group administrator in discharging its duties hereunder. Group Central Member may change the group administrator by giving OCLC written notice prior to the effective date of the change.
- E. Group Central Member is not authorized to make any representations or contract commitments on behalf of OCLC, nor to sign or negotiate any changes to any OCLC terms. Any modifications proposed by any Group Member to the applicable OCLC terms and conditions shall be submitted in writing to OCLC in advance for OCLC's written prior approval.

- F. OCLC's retention of Group Central Member's assistance in making the OCLC Group Services available hereunder shall be on a non-exclusive basis, and nothing herein shall limit OCLC's right to distribute services independent of Group Central Member, including to Group Members.

#### **4. Warranties and Disclaimers**

- A. OCLC warrants that it possesses all rights necessary to provide OCLC Group Services as described in these Terms and any other terms and conditions applicable to OCLC Group Services. OCLC Group Services will be provided to the Group substantially in accordance with applicable service documentation or, in the absence of such documentation, OCLC's then-current published product descriptions.
- B. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO OCLC GROUP SERVICES ORDERED BY THE GROUP, OCLC MAKES NO WARRANTIES, REPRESENTATIONS OR GUARANTIES, EITHER EXPRESS OR IMPLIED, AND DISCLAIMS ALL SUCH WARRANTIES, REPRESENTATIONS OR GUARANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, AS TO: (A) THE OCLC GROUP SERVICES; AND (B) THE RESULTS OBTAINED BY USING THE OCLC GROUP SERVICES.
- C. OCLC agrees to defend and assume all of Group Members' liability, costs and expenses for any suit or claim brought or asserted against Group Members as a result of OCLC's breach of the warranty set forth in the first sentence of Section 5.A above, provided and upon the conditions that the Group Members (i) promptly deliver to OCLC written notice of any such claim, together with all notices and other papers related thereto received by the Group Members and (ii) give OCLC all information and assistance reasonably requested, together with exclusive authority to investigate, settle and defend such claim. THE FOREGOING SETS FORTH OCLC'S ENTIRE LIABILITY TO THE GROUP MEMBERS FOR ANY ACTUAL OR ALLEGED BREACH OF THE WARRANTY IN SECTION 4.A. ABOVE.
- D. OCLC shall not be liable for any consequential, indirect, incidental, or exemplary damages, however caused, whether based in contract, tort, or other legal theory, and regardless of whether OCLC had prior knowledge of such damages. Except in connection with the foregoing indemnity obligation, in no event (even if the warranty disclaimers above are held to be unenforceable) shall OCLC's liability with respect to OCLC Group Services exceed the refund of charges actually paid to OCLC under these Terms for the relevant OCLC Group Services component.

#### **5. Term and Termination**

- A. This Agreement for OCLC Group Services shall commence on January 1, 2005 and may be renewed annually by Group Central Member under these Terms and at applicable pricing by providing OCLC with notice of its desire to renew. This Agreement may be terminated in accordance with the following:
- (i) effective at the end of the then-current annual period by OCLC providing Group Central Member with at least sixty (60) days prior written notice of OCLC's desire that the Agreement not renew; or
  - (ii) when a party (i.e., OCLC or the Group) in material breach has not corrected the same or diligently taken necessary corrective action within twenty (20) days after notice of such breach from the non-breaching party.

- A. In the event of termination by the Group Central Member due to OCLC's uncorrected material breach, the Group shall be entitled to a prorata refund of fees paid for the OCLC Group Services terminated. In the event of termination by OCLC due to the Group's uncorrected material breach, neither the Group nor any Group Member shall receive any type of refund or of credit for fees paid for the OCLC Group Services terminated.
- B. Sections 4 and 6 of these General Terms and Conditions shall survive termination of these Terms for any reason.

#### **6. Miscellaneous**

- A. This Agreement shall be governed by the laws of the State of Idaho and the United States of America.
- B. These Terms, including the order form to which they are attached and any pricing or other exhibits hereto, are the final, complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof. No provision of this Agreement may be changed, modified or supplemented except by a writing signed by both parties, unless otherwise provided for herein. Any terms set forth on any Group Central Member or Group Member purchase order or ordering document will not apply and are superseded by this Agreement.
- C. Neither this Agreement nor any rights hereunder, in whole or in part, shall be assigned, sublicensed, delegated or otherwise transferred by the Group or any Group Member by operation of law or otherwise. OCLC may transfer or assign this Agreement or any rights or obligations under this Agreement upon thirty (30) days written notice to Group Central Member. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- D. Each Group Member agrees that it will permit access to and use of the OCLC Group Services solely in accordance with United States import/export laws and regulations. OCLC's obligations to provide OCLC Group Services hereunder are contingent upon OCLC obtaining the necessary export licenses.
- E. Neither party shall be liable for any failure or delay in performance hereunder (other than of an obligation to pay money) due to or resulting from any cause beyond its reasonable control including, but not limited to acts of God, acts of the other party, strikes, shortage or materials, actions of government, fire, adverse weather conditions or operational failure, provided that the party so affected notifies the other promptly of the commencement and nature of the cause, the corrective steps to be taken and the estimated duration of the delay.
- F. Any notices, desired or required to be given by either party pursuant to this Agreement, shall be in writing and shall be deemed sufficient if delivered by hand or sent by certified mail, return receipt requested, to the address of the other party as set forth on the Order Form.
- G. Except as otherwise expressly provide in this Agreement, no failure on the part of either party to exercise, and no delay in exercising, any right, privilege, or power under these Terms precludes any other further exercise thereof, or the exercise of any other right, privilege, or power. Waiver by either party of any breach of any provision of these Terms shall not constitute nor be construed as a continuing waiver or as a waiver of any other breach of any other provision of these Terms.
- H. Group Members are responsible for obtaining all computer hardware, Internet access and software (including browsers and similar access software) needed to enable access to Group Services.

## **ATTACHMENT A** **GROUP CATALOG**

### **1. Additional Definitions.**

- A. **“Group Catalog”** means a subset of WorldCat that provides access to bibliographic, holdings and other information for the collections of the libraries and/or information agencies specified by the Group as such information is set in WorldCat.
- B. **“FirstSearch”** means the OCLC FirstSearch service as made available by OCLC.
- C. **“FirstSearch Terms”** means The FirstSearch/Electronic Collections Online Service Terms included in these Terms as Attachment C and the General Terms and Conditions of this Agreement.
- D. **“Authorized User”** has the meaning set forth in the FirstSearch Terms.
- E. **“Guest User”** means any member of the public.
- F. **“WorldCat”** means the electronic database of bibliographic records and other information in MARC format maintained by OCLC.

### **2. OCLC Group Catalog Terms.**

- A. In order to receive the Group Catalog, each Group Member must be a subscriber to WorldCat for unlimited access through FirstSearch (either individually or as part of the OCLC FirstSearch Base Package), subject to the FirstSearch Terms. Except to the extent otherwise indicated in this Section 2, access to and use of the Group Catalog shall be governed by the FirstSearch Terms.
- B. Upon acceptance of the Group's order for the Group Catalog and receipt by OCLC of all information reasonably requested from the Group, OCLC will create the Group Catalog by a mutually agreed upon completion date.
- C. The Group Catalog will be one of the FirstSearch databases licensed to the Group under the FirstSearch Terms. Accordingly, use of the Group Catalog is governed by the FirstSearch Terms. However, unlike the other FirstSearch databases licensed under the FirstSearch Terms, the Group may permit access to the Group Catalog by Guest Users. [Note that access to other FirstSearch databases (besides the Group Catalog) is permitted only by Authorized Users.]
- D. The Group Catalog will display to Guest Users only the bibliographic, holdings and other information for the collections of the Group Members. Authorized Users accessing the Group Catalog will be able to view the complete Group Catalog [i.e., the bibliographic, holdings and other information for the collections of the Group Members as well as such information for the other libraries and information agencies that the Group has decided to include in the Group Catalog (if any)]. Authorized Users will also have access to additional functionality within the Group Catalog that they are permitted to access under the FirstSearch Terms.
- E. In connection with the creation of the Group Catalog, OCLC and/or its regional service provider will use its/their commercially reasonable efforts to work with the Group to configure the Group Catalog in such a manner as to maximize the Group Catalog's interoperability with the local systems of Group Members and the other digital content services licensed by Group Members. These configuration services may include: (i) creating profile groups used for searching the Group; (ii) branding of the interface to the Group Catalog; and/or (iii) setting up custom groups in FirstSearch and the OCLC Interlibrary Loan service. The Group recognizes that due to

variances between the various local systems of the Group Members and the other digital content services licensed by Group Members, the configuration services described herein may not result in the highest level of interoperability desired by the Group. As stated above, OCLC's and/or its regional service provider's obligation with respect to configuration services is to exert its/their commercially reasonable efforts to achieve the results desired by the Group.

- F. To facilitate the above-referenced configuration services, the Group Members agree to cooperate with OCLC and/or its regional service provider to a reasonable degree, including, but not limited to, providing relevant system documentation and other information as reasonably requested by OCLC. OCLC agrees to use commercially reasonable efforts, and the Group Members agree to take necessary precautionary steps, to ensure the integrity of the Group Members' systems.
- G. OCLC will provide Group Central Member with a schedule setting forth dates on which the Group Catalog may be updated to reflect changes in Group membership and Group level settings (i.e., interface branding and custom groups). OCLC will work with Group Central Member to determine the dates from such schedule on which such updates will be made.
- H. Information to be included in the Group Catalog which is not contained in WorldCat at the time of the Group's order may be submitted by Group Members for inclusion in WorldCat via batchloading. (Group Members who have not used OCLC for cataloging previously must be profiled by OCLC prior to batchloading.) The following terms shall apply to the batchloading described in this Section 2.H:
  - OCLC shall load and process source data in conformance with specifications and other directions agreed upon in writing by both parties. Magnetic tapes submitted for batchload shall be technically acceptable input products, with the stored records in a format acceptable to OCLC, and shall otherwise conform with any policies promulgated by OCLC from time to time for general application to OCLC users. All data submitted to OCLC for batchloading must conform to the specifications agreed to by OCLC and the Group. If such specifications are not met, OCLC may choose not to accept the data for processing. Local information in source data will be accepted by OCLC as provided. There will not be any validation at the local level before or during processing. Source files sent to OCLC for processing will not be returned. Data will be processed according to OCLC-defined schedules. Once applicable specifications have been met, OCLC will not retain or return source files.
  - Group Member hereby grants to OCLC, other OCLC participants, non-participant users and OCLC designees an irrevocable, nonexclusive, royalty-free, sublicenseable, world-wide right to copy, display, publish, prepare derivative works from, distribute and use all bibliographic, holdings and other information supplied to OCLC by such Group Member or other entity acting on its behalf.
  - Group Member warrants that it possesses all rights necessary to submit such information for inclusion in WorldCat via batchloading and to grant the license above with respect thereto, and that doing so will not infringe the copyright or other proprietary rights of any third party.

## ATTACHMENT B

### OCLC Cataloging/Metadata Services and OCLC Resource Sharing/Union List Services

#### **1. Additional Definitions.**

A. **"WorldCat"** means the electronic database of bibliographic records and other information in MARC format maintained by OCLC.

B. **"OCLC System"** means OCLC's computerized system for creating and maintaining WorldCat, and for creating and delivering certain related products.

C. **"Current Cataloging"** means all cataloging of bibliographic materials first performed or obtained by Group Member during the term hereof, regardless of the date of acquisition or imprint of the item cataloged, which cataloging is in alphabets capable of being processed by the OCLC System; provided, however, that Current Cataloging does not include the cataloging of materials to which Group Member customarily gives less than the minimal level of cataloging as OCLC may specify for its users generally, or as may be agreed to by the parties from time to time.

#### **2. OCLC Cataloging/Metadata Services and OCLC Resource Sharing/Union List Services.**

A. Use of the OCLC System for OCLC Cataloging/Metadata services and/or OCLC Resource Sharing/Union List services shall be governed by the Group Member's existing agreement(s) with OCLC for such services or, in the absence of such agreement(s), this Attachment B and the foregoing General Terms and Conditions. Notwithstanding the foregoing, in the event of conflict between such existing agreement(s) and such General Terms and Conditions, the General Terms and Conditions shall control.

B. Upon acceptance of the Group's order for OCLC Cataloging/Metadata services and/or OCLC Resource Sharing services and OCLC's receipt of the profiling information it reasonably requests, Group Members shall be granted access to the OCLC System for purposes of utilizing cataloging/metadata and interlibrary loan tools, functionality and services (as appropriate) made available by OCLC as part of OCLC Group Services. The OCLC System and WorldCat will be made available during OCLC's standard hours, a list of which will be provided to the Group Central Member; provided, however, that OCLC may suspend OCLC System and/or WorldCat availability for repair, maintenance or replacement.

C. To permit such access to the OCLC System, OCLC shall issue to Group Members the passwords and authorization numbers necessary to access the OCLC System and WorldCat. (Group Members with existing passwords and authorization numbers shall continue to use those to access the OCLC System and WorldCat unless otherwise instructed by OCLC.) Group Members are solely responsible for maintaining the confidentiality of their authorization numbers and passwords. Accordingly, each Group Member is responsible for all use (including unauthorized use to the extent arising from Group Member's failure to fulfill the obligations in the foregoing sentence) of the OCLC System and WorldCat initiated by its authorization numbers and passwords. Group Member shall promptly notify OCLC in writing of lost or stolen passwords and authorization numbers. OCLC shall terminate lost or stolen passwords and authorization numbers upon receipt of such notice. Upon such termination, OCLC will issue new passwords and authorizations to Group Member provided that Group Member is in compliance with applicable terms and conditions.

D. (i) If Group Member elects Governing Member status and OCLC accepts such election, Group Member agrees to search WorldCat for all of Group Member's Current Cataloging to determine which of the catalog records required for Current Cataloging are available therein, and, to the extent not available therein, to create the records and insert them into WorldCat by means of online cataloging or batchloading. Whether such catalog records

are already available in WorldCat or are created and inserted by Group Member, Group Member agrees that it will attach its OCLC-assigned holdings symbol to all catalog records in WorldCat required for Current Cataloging. Group Member agrees that it will maintain its holdings information in WorldCat in an accurate and up-to-date condition, and to inform OCLC promptly of any errors in catalog entries in WorldCat which Group Member is unable to correct online.

- (ii) If Group Member elects Member or Participant status and such election is accepted by OCLC, Group Member shall be under no obligation to enter any of Group Member's Current Cataloging into WorldCat, but shall be free to do so by means of online cataloging or batchloading or any combination of the two. If Group Member elects to create and insert into WorldCat any original catalog records, Group Member will first search WorldCat fully to determine that the required records are not available therein, and will attach its OCLC-assigned holdings symbol to all such records. If catalog entries made by Group Member in WorldCat under these Terms or prior agreements with OCLC are, at any time during the term hereof, no longer accurate and up-to-date, Group Member agrees to correct the same online and to inform OCLC promptly of those records which it is unable to correct online.
- (iii) Any Group Member may change its OCLC membership status (i.e., Governing Member, Member or Participant) no more than once during any three hundred sixty-five (365) day period by providing OCLC with at least thirty (30) days prior written notice of its desire to do so.

E. Each Group Member shall be responsible for arranging for and providing at its expense the telecommunications connections, computer facilities and software programs necessary for accessing the OCLC System and WorldCat hereunder. Each Group Member shall exercise reasonable care to ensure that such connections, facilities and programs do not have an adverse effect on the OCLC System.

F. Each Group Member shall abide by standards set forth in the version of OCLC's Bibliographic Input Standards in effect at the time of cataloging and by other applicable standards adopted by OCLC from time to time. In addition, Group Member agrees to comply with any code of responsible use adopted by OCLC which is applicable to the OCLC System or WorldCat, a current copy of which will be provided to Group Member upon request. Group Member also agrees to act with good faith in the use of the OCLC System and WorldCat by doing nothing to waste, diminish or cause harm to the shared beneficial interest therein possessed by OCLC users. Group Member is bound by the general duty of OCLC users to act cooperatively with each other and to avoid practices which have the effect either of shifting the burden of payment for OCLC products and services away from those receiving the same, or manipulating use of the OCLC System in ways which unreasonably and adversely affect its performance.

G. Group Member agrees that it will not, and will not permit any other party to, access the OCLC System or WorldCat for purposes of performing services or providing assistance for or on behalf of any third-party provided, however, that Group Member's use for third-parties is permitted (a) where it generates an interlibrary loan request on the OCLC interlibrary loan subsystem or (b) pursuant to a separate written agreement between OCLC and the relevant Group Member. Except as permitted in a separate agreement between Group Member and OCLC, Group Member will not cause or permit any equipment or device to be directly or indirectly attached, linked or used with the OCLC System or WorldCat. Group Member will not, except with OCLC's prior written consent, make or permit any application or use of the OCLC System or

WorldCat not expressly permitted by this Agreement, and will not, as a result of its activities hereunder or any other circumstance, acquire any copyright, patent or any other right or interest in or to the OCLC System or WorldCat.

H. Group Member agrees that the use and transfer by Group Member of records received from OCLC or otherwise obtained hereunder (and all derivative works made therefrom to the extent authorized) will be in accordance with the Guidelines for the Use and Transfer of OCLC-Derived Records (or any substitute therefor issued by OCLC), a current copy of which is included in Exhibit A hereto. If, during the term hereof, an organization from which OCLC acquires bibliographic records for addition to WorldCat informs OCLC that records it thereafter furnishes to OCLC will be subject to usage or transfer restrictions beyond or in addition to those applicable under these Terms, and if OCLC nevertheless elects to accept such records for addition to WorldCat, it will so notify Group Members, with full details, after which, each Group Member agrees that its rights to access, use and transfer such records will be subject to said usage and transfer restrictions.

I. Batchloading. (a) OCLC shall load and process source data, and create and deliver output data, if any, in conformance with specifications and other directions agreed upon in writing by both parties. OCLC will replace defective copies of records, including those damaged or lost in transit, when caused through the fault of OCLC or its agent. OCLC must be notified of this need within sixty (60) days of receipt of such output data, or within seventy-five (75) days of shipment as evidenced by OCLC's record of shipment. This shall be OCLC's sole and exclusive liability for defective copies of records.

(b) Magnetic tapes for Group Members' cataloging submitted by batchload, if any, shall be submitted on a quarterly or more frequent basis, shall be technically acceptable input products, with the stored records in a format acceptable to OCLC, and shall otherwise conform with any policies promulgated by OCLC from time to time for general application to OCLC users. All data submitted to OCLC for batchloading must conform to the agreed-upon specifications. If such specifications are not met, OCLC may choose not to accept the data for processing. Local information in source data will be accepted by OCLC as provided. There will not be any validation at the local level before or during processing. Source files sent to OCLC for processing will not be returned. Data

will be processed according to OCLC-defined schedules. Once applicable specifications have been met, OCLC will not retain or return source files to the Group Member.

### **3. License and Indemnity by Group Members.**

A. Each Group Member hereby grants to OCLC, other OCLC participants, non-participant users and OCLC designees an irrevocable, nonexclusive, royalty-free, sublicenseable, world-wide right to copy, display, publish, prepare derivative works from, distribute and use all bibliographic records, holdings and other information supplied to OCLC during the term of this Agreement by such Group Member or other entity acting on its behalf, under any copyright, patent, secrecy or other proprietary right therein owned or controlled by the Group Member.

B. Each Group Member agrees to defend and assume all of OCLC's liability, costs and expenses for any suit or claim brought or asserted against OCLC on the ground that any information or data furnished to OCLC by the Group Member or on its behalf, including any use, reproduction or transfer thereof pursuant to the license grant in Section 3.A above, infringes any copyright, trademark, secrecy or other proprietary interest of third parties, provided and upon the conditions that OCLC (i) promptly delivers to Group Member written notice of any claim of such infringement, together with all infringement notices and other papers received by OCLC and (ii) gives Group Member all information and assistance reasonably requested, together with exclusive authority to investigate, settle and defend such claim. THE FOREGOING SETS FORTH GROUP MEMBER'S ENTIRE LIABILITY TO OCLC FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF THE TYPES DEALT WITH IN THIS SECTION 3.B.

C. The parties' rights and obligations under this Section 3 shall survive the expiration or termination of these Terms.

### **4. Disclaimer.**

A. EACH RECORD MADE AVAILABLE TO GROUP MEMBERS HEREUNDER IS PROVIDED "AS IS" AND IN THE FORM PRESENT IN WORLDCAT AT THE TIME ACCESSED. NEITHER THE ORIGINAL CATALOGING LIBRARY NOR OCLC WARRANTS THE COMPLETENESS OF SUCH RECORDS.

**EXHIBIT A****Guidelines for the Use and Transfer  
of OCLC-Derived Records**

Revision of November 16, 1987

**I. GUIDELINES**

(See Definitions in Part II below.)

1. Each member and nonmember library may use records without restriction, and may transfer records of its own holdings without restriction to other libraries.
2. In addition to transfers to libraries, each member and nonmember library may transfer records of its own holdings without restriction, to (a) member networks, (b) state and multi-state library agencies and (c) all other noncommercial firms.
  - a. Member networks may produce and transfer to any member library, copies on magnetic tape of records used or inserted into the OCLC database by the library. Each member network also may process records of the holdings of any member or nonmember library which has employed and agreed to pay it for that service, provided the member network has first signed either an individual agreement with the library, or a general agreement with OCLC, containing measures agreed upon by OCLC and the member network for protection of the records it has been employed to process. Any other use and transfer of records by member networks will be as provided in separate understandings with OCLC.
  - b. The use and transfer of records by library systems or projects operated by or under the aegis of one or more state or national library agencies will be as provided in separate understandings with OCLC. Such understandings may include (i) arrangements to incorporate state or national bibliographic databases into the OCLC system, (ii) paid-up licenses to use records in state or national programs (e.g., by means of payments for OCLC multi-institution tapes) and/or (iii) any other understandings that will facilitate state or national programs as well as the maintenance and enhancement of the OCLC database.
  - c. The use and transfer of records by any other organizations to which transfers are made under this Guideline 2 will be as provided in separate understandings with OCLC.
3. In addition, each member and nonmember library may transfer records of its own holdings to commercial firms which the library has employed and agreed to pay to process such records, provided that each commercial firm has first signed an individual agreement with the library, or OCLC has advised the library that the commercial firm has signed a general agreement with OCLC, in either case containing measures agreed upon by OCLC and the commercial firm for protection of the records it has been employed to process. In addition, each member and nonmember library may make any other transfers of records to commercial firms, subject to prior written agreements with OCLC. However, there is no requirement for prior written agreements (a) for transfers made under Guideline 1 above to libraries operated by commercial firms or (b) for transfers to commercial firms by former OCLC member libraries of records of their holdings, so long as the libraries maintain no continuing user status with OCLC.

4. When a nonmember organization makes bibliographic information available to OCLC which is subject to usage or transfer restrictions imposed by such nonmember organization, and OCLC nevertheless elects to accept the information for addition to the OCLC database, OCLC will notify libraries to which it makes the information available, and rights to use and transfer records based on such information will be subject to the same restrictions.
5. When transfers under Guideline 1 above are made to machine-readable union catalogs accessible by nonmember libraries, it is requested that machine-readable copies of the records of such union catalogs be submitted to OCLC. OCLC, at its own expense, will have the right to add such records to its database for all uses consistent with its chartered purposes.
6. The Guidelines above apply to all uses and transfers of records except where a mutually acceptable agreement establishing broader or narrower rights is made with OCLC relating to a specific product or service.

**II. DEFINITIONS**

1. The term "**member library**" means a general member of OCLC as defined in its Code of Regulations.
2. The term "**nonmember library**" means any library other than a member library.
3. A "**member network**" is an OCLC-affiliated regional, state or multi-state library network organization which is in contract with OCLC to provide OCLC services and products, or to assist OCLC to provide such services and products, to general members of OCLC.
4. A "**commercial firm**" is any organization permitted, under applicable law, to operate on a for-profit basis.
5. The term "**records**" means bibliographic records and holdings data (including copies thereof) derived from the OCLC database, including derivative works made from such records, and either received in machine-readable form or converted by the transferee into machine-readable form. The term also includes such records when held only in eye-readable form, in the case of proposed transfers to commercial firms. However, records do not include, as to any member or nonmember library (a) bibliographic records designated in the OCLC database as original cataloging by such member or nonmember library and (b) bibliographic records derived by such member or nonmember library from sources other than the OCLC database and to copies of which in the OCLC database its holdings symbol has been attached by tapeloading. Such excluded records are freely transferable and are not dealt with in these Guidelines. OCLC-derived records held only in eye-readable form are freely transferable except to commercial firms.
6. The terms "**transfer**" and "**transfer of records**" refer to all sales, exchanges, gifts, sharing and other transfers, and all online access except online access provided to end-user patrons of a library in authorized possession of the records.

## ATTACHMENT C

### The FirstSearch/Electronic Collections Online Service Terms

1. The FirstSearch service, documentation and dial-access telecommunications connections ordered by the Group will be subject to the following terms and conditions ("Terms"). OCLC reserves the right to determine Group Member type to determine and/or define an eligible site, operational entity, library system or similar limitations with respect to any prospective Group Member.

**DEFINITIONS:** **Authorized Users** shall be as defined below for each category of Group Member: **Public Library** (nonacademic) is defined by geographic/service area and is limited to a single main library and its branches (i.e., the libraries under a single director/board of trustees). Authorized Users are limited to library patrons accessing the FirstSearch service while in the library and by remote access, provided that remote access requires the patron to first log on to the library system's local computer using a current authorized library card or other library-controlled authorization before accessing the FirstSearch service. **Academic Library** is limited by geographic site and Authorized Users. Each geographically distinct campus shall be treated as a separate site for purposes of the FirstSearch service. Authorized Users at academic institutions are limited to currently enrolled students of the licensed campus, current faculty and staff who are primarily affiliated with the licensed campus and authorized on-site patrons of the Group Member's library. Remote access is permitted by currently enrolled students of the licensed campus and current faculty and staff who are primarily affiliated with the licensed campus. **Special Library** means a single corporate or other special library (e.g., law firm). A separate order is required for each geographically distinct operational entity. Authorized Users are limited to current employees of the institution which is served by the Special Library. **K-12 (Kindergarten through 12<sup>th</sup> grade school)** is defined by geographic site and Authorized Users. Each geographically distinct school building or campus shall be treated as a separate site. Authorized Users at K-12 schools shall be limited to currently enrolled students of the licensed school building or campus and current faculty and staff who are primarily affiliated with the licensed school building or campus.

2. Databases available by means of the FirstSearch service and the FirstSearch service itself are subject to OCLC and/or third-party claims of copyright and other rights. Group Member's access to and use of such databases and copying and transfer of data therefrom are subject to this Section 2 and to changes or additions thereto published by OCLC from time to time (including supplemental terms, online screen display and/or FirstSearch product descriptions and documentation). Such changes and additions shall govern over these Terms.

Authorized Users may view screen displays of data accessed via the FirstSearch service, and may make one (1) copy per screen display of any portions of such data for that person's internal or personal, noncataloging and noncommercial purposes. In addition, such copies of limited portions of such data may be transferred or sold as an incidental part of the attorney-client, consultant-client or similar relationship, or used for identifying materials to be ordered via interlibrary loan, where the principal purpose is not the distribution of data. Screen displays of such data may be electronically downloaded and temporarily stored in machine-readable form by the person so viewing the data solely as required for that person's use and/or copying of the data as permitted under this Section 2; provided that such machine-readable copies of data shall be erased after such temporary use and/or copying and shall not be transferred to, shared with or accessed by any other person.

Group Member and its Authorized Users acquire no ownership rights to any data or portions thereof provided in any form by the FirstSearch service. No part of any data provided in any form by the FirstSearch service may be disclosed, reproduced, transferred or transmitted in any form without the prior written consent of OCLC except as expressly permitted hereunder. Use of the FirstSearch service for cataloging purposes is expressly prohibited. Group Member may not resell or otherwise transfer the FirstSearch service. Authorizations and passwords will be restricted to accessing that data available via the FirstSearch service for which the Group

has a currently paid-up subscription or for which the Group has prepaid per-search fees. Group Member shall not omit, obscure or hide from any Authorized User any notice of a limitation of warranty, disclaimer, copyright, patent, trademark, trade secret, usage limitation or any logo, splash screen or any other terms and/or conditions intended to be displayed to an Authorized User of the FirstSearch service by OCLC or any database supplier thereto.

3. Any third-party database supplier shall have the right to assert or to enforce any of the provisions of these Terms directly on its own behalf.

4. OCLC may determine, add to, delete from or change at any time (i) which data and databases are available by means of the FirstSearch service, (ii) the technical and functional specifications, form and formats or availability of features and databases accessible by means of the FirstSearch service, (iii) database license rights and obligations and rules hereunder and (iv) any of these Terms. Group Member shall be bound thereby upon OCLC giving notice, which may be accomplished by online screen display or in the FirstSearch service product descriptions and documentation.

If OCLC materially reduces the Group's rights with respect to any database to which the Group is currently subscribed as a result of any revision for which notice is required to be given hereunder, the Group may terminate its subscription for that database by giving written notice to OCLC within ten (10) days after receiving notice from OCLC of such revision. In such case, the Group shall receive a refund of subscription fees prepaid and unearned for the remainder of the subscription term calculated on a prorata basis.

5. Group Member is solely responsible for all security for and all use, including unauthorized use, of the FirstSearch service initiated by its FirstSearch service authorization numbers and passwords, and shall promptly notify OCLC in writing of lost or stolen passwords and authorization numbers. The Group shall pay OCLC at OCLC's prevailing rates for unauthorized use of the FirstSearch service hereunder. Group Member's obligations under this Section 5 are material to this agreement. OCLC's sole obligation with respect to passwords and authorization numbers shall be to exert reasonable efforts to maintain the confidentiality of Group Members' passwords and authorization numbers in OCLC's possession and to terminate lost or stolen passwords and authorization numbers upon receipt of Group Member's notice. Upon such termination, OCLC will issue new passwords and authorizations to Group Member provided that Group Member is in compliance with these Terms and the lost or stolen passwords or authorization numbers were initially provided by OCLC.

6. Group Member shall notify OCLC of nonconformities between the FirstSearch service and current published product descriptions, and of any errors or inaccuracies in the databases of which Subscriber becomes aware. It is understood that, while OCLC and its suppliers and licensors have attempted to minimize inaccuracies and defects in the data and services furnished, the data and services are provided AS IS.

7. Except as otherwise expressly provided for herein: (a) OCLC, its suppliers and/or licensors shall not be liable for any loss or damage, lost profits, loss of business, loss of or damage to data, downtime or unavailability, of or in connection with Group Member's use of the FirstSearch service and databases or data available over the FirstSearch service, or from lost or stolen passwords or authorization numbers; (b) OCLC, its suppliers and/or licensors shall have no liability or obligation to Group Members, and Group Members shall have no liability or obligation to OCLC hereunder for indirect, incidental, consequential or exemplary damages, whether based on contract, tort or any other legal theory and regardless of whether a party foresaw such damages; and (c) OCLC, its suppliers and/or licensors shall have no liability nor obligation with respect to the provision or use of databases available by means of the FirstSearch service, including, without limitation, for any claims based on infringement of copyright, patent, trade secret or other right, libel, slander or invasion of privacy or claims based on errors, inaccuracies

or omissions in or loss of the data. In no event, even if the foregoing limitations are held to be not enforceable, shall OCLC's liability hereunder exceed the refund of subscription fees earned by OCLC and paid for by the Group for services and data hereunder for the most recent month.

8. Group Members shall, to the fullest extent permitted under applicable law, indemnify and hold OCLC harmless from all claims based upon or arising from the use of the FirstSearch service and data and databases available over the FirstSearch service charged against Group Members' passwords or authorization numbers except to the extent directly caused by a defect or malfunction in portions of the FirstSearch service under OCLC's direct control.

9. OCLC may suspend Group Member's access to the FirstSearch service upon written notice at any time that Group Member is in breach of its material obligations under these Terms, provided that in the event that the material breach is cured within thirty (30) days, OCLC shall restore such access.

10. Notwithstanding anything in these Terms to the contrary, OCLC reserves the right to suspend or refuse the provision of the FirstSearch service to Group Member for any reason whatsoever on conditions generally applicable to subscribers. In such case and unless otherwise provided for by these Terms, OCLC shall promptly refund to the Group on a prorata basis fees previously paid by the Group to OCLC with respect to the unexpired portion of the subscription term.

11. OCLC may remove or purge data stored with the FirstSearch service for more than thirty (30) days, without notice or liability. Group Member agrees to remove at Group Member's expense all data saved and stored by Group Member and/or Authorized Users on the FirstSearch service in conjunction with termination of this agreement, and should OCLC be required to effect such removal due to Group Member's failure to remove, Group Member shall pay to OCLC its standard charges for OCLC's efforts associated therewith.